

GAHC010016242023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/484/2023

APURBA KUMAR MAHANTA @ APURBA MAHANTA
S/O LATE SADANANDA MAHANTA
R/O VILL- AND P.O. JAJORI
P.S. JAJORI, DIST. NAGAON, ASSAM
PIN-782142

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY, GOVT. OF ASSAM,
HANDLOOM AND TEXTILE DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY

FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

3:ASSAM KHADI AND VILLAGE INDUSTRIES BOARD

REP. BY THE CHIEF EXECUTIVE OFFICER

CHANDMARI
GUWAHATI-3.

4:THE CHIEF EXECUTIVE OFFICER

ASSAM KHADI AND VILLAGE INDUSTRIES BOARD
CHANDMARI
GUWAHATI-3.

5:THE EXECUTIVE OFFICER

ASSAM KHADI AND VILLAGE INDUSTRIES BOARD
CHANDMARI
GUWAHATI-3

Advocate for the Petitioner : MS. P BHATTACHARYA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 03.02.2023

Heard Mr. T.J. Mahanta, learned senior counsel, assisted by Ms. P. Bhattacharyya learned counsel appearing for the petitioner, Mr. R. Dhar, learned counsel appearing on behalf of the respondent no.1, Mr. R. Borpujari, learned counsel appearing on behalf of the respondent no.2 and Mr. P.K. Munir, learned counsel appears on behalf of the respondent nos.3 to 5.

2. The instant writ petition has been taken up for disposal at the motion stage itself.

3. The instant writ petition has been filed challenging the show-cause note dated 30.12.2022, issued by the Chief Executive Officer of the Assam Khadi & Village Industries Board, whereby the petitioner was directed to submit his written statement in defence within ten days from the date of receipt of the said communication.

4. This matter was taken up for consideration on 01.02.2023, wherein this Court has heard at length the learned counsel appearing on behalf of the Assam Khadi & Village Industries Board as well as the learned counsel

appearing on behalf of the petitioner. Today the matter has been further taken up. While taking up the matter, attention has been drawn to the provisions of Rule 21(b)(ii) of the Assam Services (Pension) Rules, 1969 by the learned senior counsel appearing on behalf of the petitioner to the effect that there is a bar on initiating departmental proceeding if not instituted while the officer in service in respect to such event which took place 4 (four) years before such institution.

5. The learned senior counsel appearing on behalf of the petitioner drawing the attention to the impugned show-cause notice submitted that a perusal of the allegations made therein would show that on the basis of an Audit Report of the Nagaon District Office and Raha Multi Disciplinary Training Center upto the year 2015-16, there is an allegation of an amount of Rs.3,21,621/- (Principal Rs.1,13,183.00 + admissible interest Rs.2,08,438.00) to be misappropriated by the petitioner during his tenure as District Officer of Nagaon District Office and Principal Raha MDTC. The learned senior counsel for the petitioner has further drawn the attention to the said impugned show-cause notice and had submitted that the cash short loan in advances in respect of Nagaon district is for the period 2004-05 and 2005-06 and in regard to amount in advances, the period is 2014-15. He further submitted that in respect of Raha MDTC, cash short is for the period from 2012-13 and the loan and advances is during the same period. Therefore, it is his submission that taking into account that the events had taken place more than 4 (four) years ago from the date of the issuance of show-cause notice, the said show-cause notice on the face of it is barred under law and accordingly, the said show-cause notice is required to be interfered with.

6. On the other hand, Mr. P.K. Munir, learned counsel appearing on behalf of the Assam Khadi & Village Industries Board has submitted that these

misappropriations had come to light on the basis of an Audit Report of the year 2015-16, which was submitted on 21.08.2017 and as such, the respondent Assam Khadi & Village Industries Board, after taking into consideration the necessity for initiating a proceeding against the petitioner have initiated the proceeding vide the show-cause notice dated 30.12.2022.

7. I have heard the learned counsels for the parties and perused the materials on record. The issue involved herein is a pure question of law as to whether on the admitted facts, the show-cause notice or for that matter a departmental proceeding could be initiated in view of the bar under the provisions of Rule 21(b)(ii) of the Assam Services (Pension) Rules, 1969. Rule 21(b)(ii), being relevant, is quoted hereinbelow:

“21. The Governor of Assam reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service, including, service rendered upon re-employment after retirement ; provided that—

(b) such departmental proceeding, if not instituted while the officer was in service, whether before his retirement or during his employment—

(ii) shall not be in respect of any event which took place more than 4 years before such institution.”

8. Perusal of the above rule shows that there is no bar in initiating a proceeding even after the retirement of a Govt. employee. However, no departmental proceeding can be instituted in respect of an event which took place more than 4 (four) years before such institution. The use of the word ‘event’ makes it specific and clear to mean occurrence of the event, for which the alleged misconduct have been committed. As would be seen from the impugned show-cause notice itself, the periods mentioned therein are for the

period 2004-05, 2005-06, 2012-13 and the last of such period is 2014-15. Therefore, the last of such event had occurred in the year 2014-15. The impugned show-cause notice having been issued only on 30.12.2022, the same violates the mandate of Rule 21(b)(ii) of the Assam Services (Pension) Rules, 1969.

9. The submission made to the effect by the learned counsel appearing on behalf of the Assam Khadi & Village Industries Board to the effect that it was only on 21.08.2017, it came to the notice of the Board pursuant to the submission of the Audit Report in the opinion of this Court is misconceived in as much as taking into account that Rule 21(b)(ii) uses the term 'any event' and not 'cause of action' as had been contradistinctively used in Rule 21(c) of the Assam Services (Pension) Rules, 1969. Accordingly, this Court, therefore, sets aside the impugned show-cause notice 30.12.2022 as well as any proceeding initiated on that basis.

10. It has also been brought to the notice of this Court by the learned senior counsel appearing on behalf of the petitioner that admittedly the Chief Executive Officer of Assam Khadi & Village Industries Board had issued the communication dated 13.12.2022, whereby the amount of Rs.40,51,882/- is due to be paid to the petitioner as per his entitlement. In the said communication, it has been also mentioned that the entire retirement benefit of the petitioner would be paid within 3 (three) months after observing all formalities.

11. Considering the above, this Court therefore directs the respondent authorities more particularly the Assam Khadi & Village Industries Board to pay the petitioner his entitlement in terms of the communication dated 13.12.2022 within a period of 2 (two) months from the date a certified copy of this order is served upon the Chief Executive Officer of Assam Khadi & Village Industries

Board.

12. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant